



# THE COMMITTEE ON ENERGY AND COMMERCE

## INTERNAL MEMORANDUM

May 31, 2011

To: Health Subcommittee Members

From: Majority Staff

Re: Hearing Memo

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On Thursday, June 2, 2011, at 15 minutes after the completion of the Full Committee hearing in 2322 Rayburn, the Subcommittee on Health will hold a hearing entitled, "PPACA's Effects on Maintaining Health Coverage and Jobs: A Review of the Health Care Law's Regulatory Burden."

The purpose of the hearing is to examine the impact of major rules issued by the Department of Health and Human Services (HHS) implementing the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010.

### **I. Witnesses**

#### Panel One

**Scott Harrington, Ph.D.**

Professor of Health Care Management  
and Insurance and Risk Management  
Wharton School  
University of Pennsylvania

**Randi Reichel, Esq.**

Counsel  
Mitchell, Williams, Selig,  
Gates & Woodyard, P.L.L.C.  
On behalf of America's Health Insurance Plans

**Janet Trautwein**

CEO  
National Association of Health Underwriters

**Edward Fensholt**

Senior Vice President  
Lockton Benefit Group

**Katherine Hayes**

Associate Research Professor  
Department of Health Policy  
George Washington University School  
of Public Health and Health Services

**Terry Gardiner**

Vice President, Policy and Strategy  
Small Business Majority

**Ethan Rome**

Executive Director  
Health Care for America Now

#### Panel Two

**Steve Larsen**

Director  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare and Medicaid Services

## **II. Discussion**

Major portions of PPACA required implementing regulations. The Center for Consumer Information and Insurance Oversight (CCIIO) at the Centers for Medicare and Medicaid Services (CMS) has been charged by the Secretary of HHS as the lead office in developing and implementing these regulations.

## **III. Issues**

### **A. Grandfathered Health Plans**

Section 1251 of PPACA generally sets forth conditions for when a group or individual health plan in effect before March 23, 2010 may be exempt from certain requirements of the law. On June 17, 2010, the Department of Health and Human Services issued an interim final rule imposing additional restrictions that health plans must comply with in order to protect their grandfathered status<sup>i</sup>. HHS issued an amendment to the interim final rules on November 17, 2010.<sup>ii</sup>

The rule has major implications as to whether individuals can maintain their existing health coverage. The Administration has estimated that 49 percent to 80 percent of small-employer plans, 34 percent to 64 percent of large-employer plans, and 40 percent to 67 percent of individual insurance coverage will not be grandfathered by the end of 2013.

### **B. Medical Loss Ratios**

Section 1001 of PPACA requires health plans to spend 80 to 85 percent of premium revenue on “reimbursements for clinical services” and “activities that improve health care quality” beginning in 2011. On December 1, 2010, HHS issued regulations defining approved activities that improve health care quality or fall within the department’s definition of clinical services.<sup>iii</sup> As a result, the underlying provision gives HHS vast control over the design of private health insurance coverage irrespective of consumer health care preferences.

### **C. Rate Review**

Section 1003 of PPACA establishes a federal program for review of health care premiums. Prior to PPACA, states had full authority to implement programs to review premium increases in the small group and individual market. HHS issued a final rule on May 19, 2011, implementing the federal rate review program authorized in PPACA.<sup>iv</sup> Duplicative of ongoing state review programs, the statute provides HHS with the authority to require health plans to justify rate increases, imposes paperwork and disclosure requirements, and empowers the Secretary with continuing monitoring authority.

### **D. Future Rulemaking**

HHS is expected to promulgate several additional rules implementing the health care law

over the course of 2011. The Department will issue rules regarding the establishment, administration, and requirements of American Health Benefit Exchanges authorized by Section 1311 of PPACA. Section 1302 of PPACA requires the Secretary of HHS to issue an essential health benefits package. The rule will set forth the amount, scope, and duration of benefits that must be purchased by individuals through qualified health plans in PPACA's insurance exchanges.

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*If you need more information, please call Paul Edattel or Ryan Long at 5-2927.*

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<sup>i</sup> 75 FR 34537 – Interim Final Rules for Group Health Plans and Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (June 17, 2010)

<sup>ii</sup> 75 FR 70114 – Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act (November 17, 2010)

<sup>iii</sup> 75 FR 74863 – Interim Final Rule Regarding Health Insurance Issuers Implementing MLR Requirements Under the Patient Protection and Affordable Care Act (December 1, 2010)

<sup>iv</sup> Final Rule Regarding Rate Increase Disclosure and Review (May 19, 2011)